

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

FILED BY S
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THOMAS A. GOULD
CLERK, U.S. DISTRICT COURT
W.D. OF TN, JACKSON

JEFFREY BUTLER,

Plaintiff,

VS.

ORMET ALUMINUM MILLS
PRODUCTS CORPORATION,

Defendant.

No. 04-1160-T/An

ORDER CERTIFYING APPEAL NOT TAKEN IN GOOD FAITH
AND DENYING LEAVE TO APPEAL *IN FORMA PAUPERIS*

Plaintiff Jeffrey Butler, acting *pro se*, filed this employment discrimination action against Ormet Aluminum Mills Products Corporation on July 20, 2004. When the defendant failed to respond to the complaint, the Clerk entered default on motion of the plaintiff. On June 9, 2005, the Court issued an order granting plaintiff's motion for default judgment. Subsequently, defendant moved to set aside the default judgment and to dismiss the complaint with prejudice on the grounds that plaintiff's action violated the automatic stay provisions of 11 U.S.C. § 362(a)(1) and that his claim had been discharged in the defendant's Chapter 11 bankruptcy proceeding in the Southern District of Ohio.

The Court granted the defendant's motion on September 9, 2005, setting aside the default judgment and dismissing the action with prejudice. A judgment was filed on

September 13, 2005 and formally entered on the docket on September 14, 2005. Plaintiff filed a “Motion to Reopen Default and to Reinstate Previous Claims Retroactively” on September 23, 2005, which the Court construed as a motion to alter or amend the judgment under Fed. R. Civ. P. 59(e). The motion was denied on October 14, 2005.

Plaintiff has now filed a notice of appeal from the judgment entered in this case. However, plaintiff did not pay the \$255 appellate filing fee and has not sought leave to proceed on appeal *in forma pauperis* in accordance with Fed. R. App. P. 24(a).

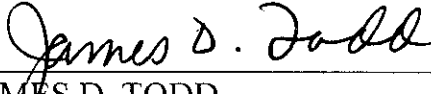
Although Rule 24(a)(1) provides that a party seeking pauper status on appeal must first file a motion in the district court, along with a supporting affidavit, the rule also provides that if the district court certifies that an appeal would not be taken in good faith, or otherwise denies leave to appeal *in forma pauperis*, the party must file his motion to proceed *in forma pauperis* in the Court of Appeals. Fed. R. App. P. 24(a)(4)-(5).

The good faith standard is an objective one. Coppedge v. United States, 369 U.S. 438, 445 (1962). An appeal is not taken in good faith if the issue presented is frivolous. Id. The same considerations that led the Court to dismiss this case with prejudice on the grounds that the claim has been discharged in bankruptcy also compel the conclusion that an appeal would not be taken in good faith.

It is therefore CERTIFIED, pursuant to Fed. R. App. P. 24(a), that any appeal in this matter by plaintiff is not taken in good faith. Leave to proceed on appeal *in forma pauperis* is, therefore, DENIED. Accordingly, plaintiff must either pay the full \$255 appellate filing

fee or file a motion to proceed *in forma pauperis* and supporting affidavit in the Sixth Circuit Court of Appeals within thirty (30) days.

IT IS SO ORDERED.



JAMES D. TODD
UNITED STATES DISTRICT JUDGE



DATE



Notice of Distribution

This notice confirms a copy of the document docketed as number 22 in case 1:04-CV-01160 was distributed by fax, mail, or direct printing on October 24, 2005 to the parties listed.

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Honorable James Todd
US DISTRICT COURT